

Rule 072
Use Tax
Discussion Draft 1

072. APPLICATION AND PAYMENT OF USE TAX (RULE 072).

01. Imposition of Use Tax. Use tax is imposed upon the privilege of using, storing, or otherwise consuming tangible personal property within Idaho. The tax is imposed on the value of the tangible personal property. A recent sales price is presumptive evidence of the value. In the absence of a recent sales price, the value of the property subject to the use tax will be the fair market value at the time of first use in Idaho. Special rules apply to transient equipment which is present in Idaho ninety (90) days or less in any consecutive twelve (12) months. See Section 63-3621A, Idaho Code. (7-1-93)

02. Use. Use is the exercise of right or power over tangible personal property incident to either ownership of the property or the performance of a contract. The term “use” does not include use of tangible personal property incident to the performance of a contract if the owner of the tangible personal property is a business primarily engaged in producing tangible personal property for resale and the property is exempt under Section 63-3622D, Idaho Code. See Rules 012, 077, and 079 of these rules. (3-15-02)

03. Storage. Storage is any keeping or retention of tangible personal property in this state, except as inventory for the purpose of sale in the regular course of business or for subsequent use solely outside Idaho. (7-1-93)

04. Specifically Excluded from the Definition of Both Use and Storage Are: (7-1-93)

- a.** Retention or use of property for subsequent transportation outside the state; or (7-1-93)
- b.** Processing, fabricating, repairing, or manufacturing property for subsequent transportation and use or resale solely outside the state. (7-1-93)

05. Receipt Showing Sales Tax Paid. If the property is purchased from an Idaho retailer and Idaho sales tax is charged by and remitted to the retailer, then no use tax will apply to the property. A purchase order issued by the purchaser advising the retailer to charge or include the Idaho sales tax is not sufficient evidence that the tax has been paid. The retailer’s receipt provided to the purchaser must display separate statement of the tax to relieve the purchaser of the use tax requirements. (6-23-94)

06. Out-of-State Purchases. If the property is purchased outside the state or from a retailer not subject to the Commission’s jurisdiction and is subsequently used, stored, or otherwise consumed in this state, then a use tax will apply. The purchaser must report and remit the use tax directly to the state by filing a use tax return on the forms prescribed by the Commission. (6-23-94)

07. Taxes Paid to Another State. The taxpayer may offset from the use taxes payable to Idaho any amount of general sales or use taxes paid to another state on the purchase or

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use of the same property if paid by the same taxpayer. A credit may not be claimed for taxes erroneously paid to another state if no taxable sale or use under the laws of that state occurred. In determining whether a tax is due in the state where paid, the Commission will be bound by the laws, rules, and administrative rulings of the state to which tax is paid. (7-1-93)

a. If the amount of tax levied by the state to which it is paid is less than the amount of the Idaho tax due, then the balance must be paid as Idaho tax. (6-23-94)

b. If the amount of tax levied by the state to which it is paid is equal to or greater than the Idaho tax, then there will be no taxes due to Idaho in regard to the same transaction or subsequent use of the property. (6-23-94)

c. If the taxes paid to the other state are greater than the Idaho tax, the amount of offset available is limited to the amount of Idaho tax due on the same transaction or use of the property. (6-23-94)

08. Use Undeterminable at Time of Purchase. In some cases a purchaser may be unable to determine at the time of purchase whether or not property purchased by him will be used for a taxable or nontaxable purpose. For example, a purchaser engaged in both a retailing and contracting business may not know whether an item will be sold at retail or withdrawn from inventory and used in the course of performing a contract to improve real property. In these circumstances the purchaser may purchase the goods without paying tax if he presents the documentation required by Rule 128 of these rules. The purchaser must maintain adequate accounting control to insure that use tax is properly accrued on all property subject to tax. (3-15-02)

09. Removal from This State. If property is held in this state solely for the purpose of subsequent transport and use outside Idaho or is to be processed, fabricated, attached to, or incorporated into property that is to be transported outside and used or sold outside the state, a use tax will not apply. (7-1-93)

10. Tangible Personal Property Removed From Inventory. A retailer or wholesaler may purchase tangible personal property for resale without paying sales tax. The tangible personal property then becomes part of inventory. The retailer or wholesaler may use inventory in displaying or demonstrating the inventory for purposes of selling the inventory in the normal course of business. If the retailer or wholesaler uses inventory for any purpose besides display or demonstration in the normal course of selling that inventory, the retailer or wholesaler owes use tax. If inventory is consumed during such display or demonstration, the retailer or wholesaler owes use tax. The retailer or wholesaler must calculate the use tax on the value of the tangible personal property. Use tax does not apply to any use or consumption of tangible personal property where such use is specifically exempted from use tax by Idaho Code. (4-4-13)

a. Inventory held for resale becomes subject to use tax at the time the retailer or wholesaler removes the tangible personal property from inventory. If a retailer or wholesaler

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removes tangible personal property from inventory and then performs additional manufacturing or processing labor, the retailer or wholesaler should calculate use tax on the acquisition cost before the additional labor. However, if a retailer or wholesaler removes tangible personal property after performing additional manufacturing or processing labor, the retailer or wholesaler must calculate use tax on the total inventoried cost including the additional labor. (4-4-13)

b. [Special rules apply to retailers giving away prepared food and beverage to their employees. See Rule 041 of these rules for more information.](#) ()

bc. Example 1. A sawmill withdraws lumber from its resale inventory and uses it to construct a building. The lumber was not identified for this use until it was taken from inventory held for resale. Use tax is due on the manufactured value of the lumber taken from inventory. (7-1-93)

ed. Example 2. A sawmill cuts specific trees from its own land. The sawmill then cuts these trees to specific dimensions and uses the beams and lumber to construct a building. The trees and lumber are identified for use in constructing the building from the time the trees are cut. Use tax is due on the stumpage value of the trees. (7-1-93)

de. Example 3. A retailer purchases shirts without paying tax for his resale inventory. The shirts cost the retailer ten dollars (\$10) each. He withdraws ten (10) of the shirts from inventory and donates them to a sports team he is sponsoring. The retailer owes use tax on one hundred dollars (\$100). (7-1-93)